**THE HON'BLE SRI JUSTICE C.V. RAMULU**

Friday, 27th October, 2006

**W.P.Nos.16445 and 17475 of 2006**

**W.P.No.16445 of 2006**

Between:

Ubba Venkatesh & another … Petitioners

and

The Government of Andhra Pradesh,
rep. by its Principal Secretary,
Agriculture & Cooperation (Mktg.I-2)
Department, A.P. Secretariat, Hyderabad
and others … Respondents

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**W.P.Nos.16445 and 17475 of 2006**

**COMMON ORDER:**

Common question of fact and law arises for consideration in these two Writ Petitions; therefore, they are being disposed of by this common Order.

The only question that arises for consideration is whether the provisions of Section 4(3)(a) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act,1966 (for short 'the Act') is prospective or retrospective in operation ?

It appears that the petitioners belong to Tribal community and are residents of various villages in Bhadrachalam Mandal, which is an agency area (scheduled area). They filed these Writ Petitions being aggrieved by G.O.Ms.No.38, Agriculture and Cooperation (Mktg.I-2) Department, dated 17-2-2006 issued by the 1st respondent under the provisions of the Act constituting the Agricultural Market Committee, Bhadrachalam, Khammam District, without reference to Agency Laws and without proper representation to the Tribals, even though the Market is located in the scheduled area. Under the impugned G.O., a notification has been issued purported to be in exercise of the powers conferred by Section 6(1) read with sub-sections (1) and (2) of Section 5 of the Act constituting Agricultural Market Committee for Bhadrachalam of Khammam District with a Chairman, Vice-Chairman and 16 members, most of whom seem to be non-tribals.

It is the contention of the learned counsel for the petitioners that the establishment of markets and constitution of market committees in the scheduled areas has been completely taken away from the purview of the Act by A.P. Act 16 of 2000. From a reading of the Statement of Objects and Reasons of the Amended Act (Act 16 of 2000), it is clear that to be in tune with the Central Act, the Act has been amended by way of insertion of the words "excluding the Scheduled areas" after the words "Every Market Committee shall establish in the notified area" in clause (a) of sub-section (3) of Section 4 of the Act.

Whereas, learned counsel for the respondents submitted that since the market areas have already been notified as early as in 1971, the constitution of the market committee is not prohibited. Even otherwise, Act 16 of 2000 has no retrospective effect. There is no separate notification issued for notifying the market area. Thus, under the impugned G.O., Government has simply constituted a market committee to carry out the business. Therefore, it must be deemed that in all the places where the market areas have already been notified, the constitution of the market committees is not prohibited. Further, establishment of market is altogether different from constitution of market committee.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the entire material made available on record.

Before going into the merits of the case, it may be necessary to notice Section 4 of the Act, which reads as under:

> "**4. Constitution of Market Committee and declaration of notified market area:-** (1)…….
>
> (2) …….
>
> (3)(a) Every market committee shall establish in the notified

area, excluding the scheduled areas, such number of markets as the Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government from time to time, by a general or special order.

(b)……

(c)……..”

It may also be necessary to notice the Statement of objects and Reasons of Andhra Pradesh (Agricultural Produce and Livestock) Markets (Amendment) Act, 2000 (Act No.16 of 2000), which reads as under:

“ **Statement of Objects and Reasons:**

The Government of India, by the provisions of the Panchayats (Extension to the Scheduled Areas) Act,1996 (Central Act 40 of 1996) passed by the Parliament and received the assent of the President of India on the 24th December,1996 have provided for extension of the provisions, of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas also.

According to Section 4(m)(iv) of that Act, the power to manage village markets by whatever name called shall be vested with Panchayats in Scheduled Areas.

According to Section 4(3)(a) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, (A.P. Act 16 of 1966) the Market Committee is responsible to establish and manage markets even in Scheduled Areas, since the provisions of the two Acts are overlapping, it is decided to amend the State Act, suitably, to be in tune with the provisions of the Central Act.”

The purport of Act 16 of 2000 is exclusion of establishment of any market in the scheduled areas. The insertion of words “excluding the Scheduled areas” in Section 4(3)(a) of the Act is nothing but substitution of the words in the Section. Law, in this regard, is well settled that whenever there is a substitution/insertion of a particular provision, it must be deemed that it had come into force from the date when the law was originally enacted. Further, it is a declaration, by

law, as to excluding the scheduled areas from the purview of the provisions of the Act. A declaratory law shall have retrospective effect automatically, unless there is an express provision to show that it has no retrospective operation. Learned counsel for the petitioners, in this regard, rightly relied upon the Judgment in **ZILE SINGH v. STATE OF HARYANA**[1] and drawn attention of the Court to paragraph-14, which reads as under:

> "14. The presumption against retrospective operation is not applicable to declaratory statutes.....In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.....An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect."

From Act 16 of 2000 it is clear that it is an explanatory Act passed to supply an obvious omission. Therefore, in the aims and objects, it was made clear that the provisions of Panchayats (Extension to the Scheduled Areas) Act,1996 (Central Act 40 of 1996) passed by the Parliament provided for extension of the provisions of Part IX of the Constitution relating to Panchayats to the scheduled areas also. As per Section 4(m)(iv) of the said Act, the power to manage village markets, by whatever name called, shall be vested with Panchayats in scheduled areas. The amendment by way of Act 16 of 2000 is to be in tune with the Central Act 40 of 1996, Part IX and Schedule V of the Constitution of India.

In view of the above, I am in complete agreement with the submissions made by the learned counsel for the petitioners that Act 16 of 2000 has not only retrospective effect, but also prohibits the

constitution of market committees in the Scheduled areas under the Act. Therefore, the contention of Sri G.Vidyasagar, learned counsel appearing for the 3rd respondent in Writ Petition No.16445 of 2006, that the notified areas under Section 3 read with Sections 4 and 5 of the Act would indicate that they deal only with constitution and composition of market committees and to this effect, there is no prohibition; therefore, the impugned G.O. issued by the 1st respondent is perfectly valid, cannot be countenanced. Section 4(3)(a) of the Act contemplates that every market committee shall establish in the notified area, excluding the scheduled areas, such number of markets as the Government may from time to time direct. May be, the notified areas are already there even in the scheduled areas as per the Act, but as soon as Act 16 of 2000 has come into force, all the markets established and the market committees constituted will have to be treated as nullified by way of a legislative Act i.e. Act 16 of 2000. The argument advanced by the learned counsel for the respondents runs contrary to the aims and objects of the Amended Act. The purpose of the Amended Act is that in scheduled areas, the village markets, by whatever name called, shall vest with the Panchayats. In respect of scheduled areas, a market committee cannot be constituted under the Act for the management of the markets, since they have to be managed by the existing Panchayats.

In the circumstances, I am of the opinion that the issuance of impugned G.O. constituting Agricultural Market Committee, Bhadrachalam, which is admittedly, located within the scheduled area is arbitrary, illegal and contrary to the aims and objects of Act No.16 of 2000. In fact, the amended Act categorically indicates that according to Section 4(m)(iv) of the Panchayats (Extension to the Scheduled

Areas) Act,1996, the power to manage village markets, by whatever name called, shall be vested with Panchayats in Scheduled Areas and to be in tune with the aims and objects of said Section 4(m)(iv), A.P. Act 16 of 2000 was enacted.

For all the above reasons, the impugned Governmental Order in G.O.Ms.No.38, Agriculture and Cooperation (Mktg.I-2) Department, dated 17-2-2006 issued by the 1st respondent, is liable to be set aside and is accordingly set aside. The Writ Petitions are, therefore, allowed. No order as to costs.

27-10-2006

prk

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[1] 2004(8) SCC 1